



CITY OF HAYWARD AGENDA REPORT

Meeting Date 10/17/02
Agenda Item 2

TO: Planning Commission

FROM: Erik J. Pearson, AICP, Associate Planner

SUBJECT: **Use Permit Application No. PL-2002-0106 - Julie McKillop and Ana Marisol Valles (Applicants); Julie McKillop (Owner):** Request to Operate a Retail Wine and Food Shop in the CC-C/SD-1 (Central City-Commercial/Streetcar Special Design District) Zoning District

The Property is Located at 742 B Street, across from City Hall

RECOMMENDATION:

Staff recommends that the Planning Commission:

1. Find that the proposed project is Categorically Exempt from the California Environmental Quality Act (CEQA) guidelines, pursuant to Sections 15301, *Existing Facilities* and 15303, *New Construction or Conversion of Small Structures*; and
2. Approve the Use Permit, subject to the attached findings and conditions of approval.

BACKGROUND:

The historic Victorian house, currently being renovated, was moved to its present location during site preparation for the new Albertson's grocery store. The applicant is working on restoring the house and has constructed a new foundation and ground floor. The Redevelopment Agency sold the property and the house to the applicant with the understanding that a commercial use would occupy the new ground floor level. The site is surrounded by Albertson's to the east, residential and commercial uses to the north and west and City Hall across B Street to the south.

DISCUSSION:

The ground floor of the building is proposed to be used for a retail wine and food shop with both on-sale and off-sale business. Indoor café seating and outdoor patio seating between the rear of the building and the parking lot would be available for customers. Outdoor seating in front of the building near the street would be beneficial for pedestrian activity, however, due to the location of the building on the lot and the design of the building (with the residential entrance stairway at the front), outdoor seating at the rear would allow for a more efficient use of the property. The shop would offer cold foods typical of a delicatessen for consumption on or off the premises. A

wine tasting bar would also be a major feature of the store. The applicant has also expressed interest in displaying local art and hosting occasional special events. The operating hours would be 11 a.m. to 10 p.m. daily. There will also be two residential rental units on the second and third floors of the building.

The General Plan designation for the property is ROC (Retail and Office Commercial), which supports mixed retail uses downtown. Land use policies in the General Plan encourage development that provides venues for cultural vitality and encourages both commercial and residential uses in the area surrounding the BART station. The Plan also supports pedestrian friendly development. The proposed shop will be a continuation of the retail and service shops under construction on B Street and will be within easy walking distance of BART, City Hall, other shops on B Street between Watkins and Foothill and the public parking garage.

The purpose of the CC-C zoning district is "to establish a mix of business and other activities which will enhance the economic vitality of the downtown area." Retail shops are primary uses in the CC-C District.

Use Permit

The store, defined in Section 10-1.2735(b) of the Zoning Ordinance as an Alcoholic Beverage Outlet, is subject to approval of a use permit. This section of the Ordinance also sets forth the following restrictions:

- No new off-sale liquor establishments are permitted within a radius of 500 feet of any other on-sale or off-sale liquor establishment, or of any school, public park, library, playground, recreational center, day care center, or other similar use.
- Within the Central City Zoning District, no on-sale liquor establishment shall be established or maintained within a radius of 100 feet of any off-sale liquor establishment, or of any school, public park, library, playground, recreational center, day care center, or other similar use; and
- Within the Central City Zoning District, no more than two on-sale liquor establishments shall be permitted per block side or face.

The nearest on-sale establishment is the B Street Bar & Grill, which is 511 feet away from the proposed establishment. There are no off-sale establishments within 500 feet. The Albertson's grocery store is exempted from the regulations because it has over 10,000 square feet of floor area and does not devote more than 5 percent of the store to the sale, display, and storage of alcoholic beverages. There are no other on-sale liquor establishments on the subject block face. The City's main library is approximately 800 feet away.

This store would be unique to downtown as well as the City as a whole in that the business would specialize in wine, wine tasting and education about wine. The wines offered would be from smaller vineyards and wineries generally not available at major grocery stores.

The City Council has denied two use permits for alcoholic beverage outlets within the last few years. Both of these use permits involved variances to distance as they did not meet the 500-foot separation requirement. El Tapatio Carniceria and Taqueria located at 603 A Street was denied a use permit and variance by the City Council in July of 1999. On May 21, 2002 the City Council denied the Crossroads World Market a use permit and variance to sell alcohol. In September of 2000, the Planning Commission approved a use permit for the Turf Club at 22519 Main Street. This on-sale establishment did not need a variance as it met the separation requirements of the Zoning Ordinance.

The State Department of Alcoholic Beverage Control (ABC) has determined that there is an over-concentration of off-sale liquor licenses within this census tract¹. Their records indicate that there are 12 off-sale licenses operating where 4 licenses is considered appropriate for the population. Also, there are 38 active on-sale licenses where 6 should be allowed. The number of on-sale licenses is due in part to the large number of restaurants downtown. The downtown area is the part of the City that eating establishments with on-sale licenses should be encouraged. ABC uses a per capita ratio to determine the number of licenses that should be issued for a certain census tract. Being located downtown, near the BART station, customers may be attracted from other parts of the City as well as from other cities. Furthermore, many more units of multiple family residential housing are planned or are under construction in the downtown area. As these units are occupied, the number of alcohol establishments per capita will be reduced. Finally, the Zoning Ordinance requires at least 500 feet between off-sale establishments, but only requires 100 feet between on-sale establishments within the CC-C district. The intent of the Zoning Ordinance is to have a higher concentration of on-sale licenses within the downtown area.

If the use permit is approved, ABC will ask the City to prepare a letter stating that the shop is necessary for the public convenience and welfare. Staff would support this action in that the proposed shop is a specialty store that would be unique to the area. The proposed shop, housed in an historic building with the potential for use as an art gallery and the outdoor garden patio seating, all combined would help to enhance the vibrant atmosphere of downtown.

In another earlier case, the Planning Commission was asked to make a finding for the Department of Alcoholic Beverage Control (ABC) that allowing the sale of alcoholic beverages at the former Korean market on Foothill Boulevard was necessary for the public convenience and welfare. Neither the Commission nor the Council could make a finding that it was necessary for the public convenience and welfare with the saturation of outlets in the downtown area, as there was no mechanism for imposing conditions of approval (such as hours of operation, advertising, packaging) under which the market could operate if it were to sell alcoholic beverages. The market did not require a use permit because it was a grocery store with more than 10,000 square feet of floor area. The license in question was for off-sale only. The proposed wine shop would have off-sale as well, but would also have on-sale business and food service, which are desirable for downtown. The proposed shop will also have conditions of approval that will help ensure that there are no negative impacts to the neighborhood associated with the business.

¹ Census tract 4354 extends from the northerly side of Jackson Street and E Street to the south side of Grove Way between Fourth Street on the east and the BART tracks to the west.

Although a significant portion of the customers are expected to walk from other areas of downtown, the City's Off-Street Parking Regulations require one parking space per 315 square feet of gross floor area. Five parking spaces are required for the 1,438 square foot ground floor area. Six parking spaces can be provided. No parking spaces are required for the two residential units, however, use of the parking area by the residents will be heaviest at night when the store is closed.

ENVIRONMENTAL REVIEW:

The proposed project is Categorically Exempt from the California Environmental Quality Act (CEQA) guidelines, pursuant to Sections 15301, *Existing Facilities* and 15303, *New Construction or Conversion of Small Structures*.

The structure is not on the City's list of Historically Significant Buildings, but it does meet the criteria for being included. A condition of approval has been included that requires the applicant to submit an application to add the property to the list.

PUBLIC NOTICE:

On February 26, 2002, a Referral Notice was sent to every property owner and occupant within 300 feet of the subject site, as noted on the latest assessor's records. Notice was also provided to other City Departments, the Hayward Chamber of Commerce, the Hayward Area Planning Association, the Hayward Downtown Association and CommPre. The Referral Notice provided an opportunity for persons to comment on the project. Staff received one phone call from a citizen who would rather see new businesses locate on the other side of Watkins, in the downtown core. The Police Department indicated they support the project.


On October 7, 2002, a Notice of Public Hearing for the Planning Commission meeting was mailed. In addition, a public notice sign was placed at the site prior to the Public Hearing to help notify neighbors and interested parties residing outside the 300-foot radius.

A letter was received from COMMPRE (Community Prevention of Alcohol-Related Problems) stating that the proposed shop would be within 500 feet of both the B Street Bar and Grill and the Bottle and Book House and that they would not be supporting the application. Although staff informed them that both establishments are over 500 feet away and that the proposal meets all requirements of the Zoning Ordinance, COMMPRE remains opposed due to the over-concentration of licenses in the area.


CONCLUSION:

The proposed project is consistent with adopted land use policies of the General Plan. The project also meets all applicable requirements of the Zoning Ordinance and other applicable ordinances. Staff recommends that the Use Permit be approved.

Prepared by:

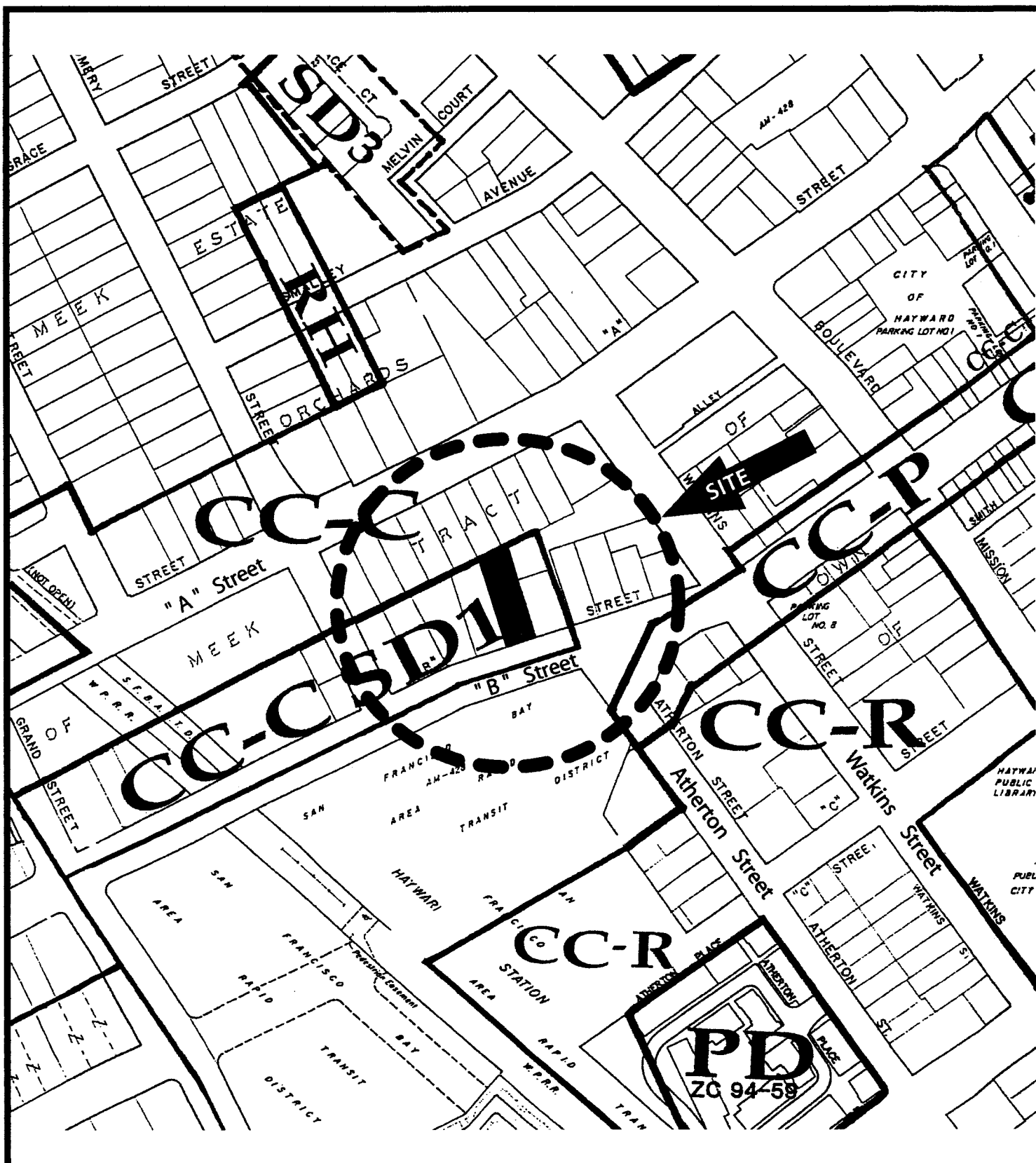

Erik J. Pearson, AICP
Associate Planner

Recommended by:


Dyana Anderly, AICP
Planning Manager

Attachments:

- A. Area & Zoning Map
- B. Findings for Approval for Use Permit Application No. 2002-0106
- C. Conditions for Approval for Use Permit Application No. 2002-0106
- D. Written proposal from applicant
- E. Letter from COMMPRE dated 10/9/02
Plans



Area & Zoning Map

PL-2002-0106 UP

Address: 742 B Street

Applicant: Julie McKillop & Ana Marisol

Owner: Julie McKillop

CC-C-Central City-Commercial

CC-P-Central City-Plaza

CC-R-Central City-Residential

PD-Planned Development

RH-High Density Residential RHB 7

SD-Special Design

FINDINGS OF APPROVAL

USE PERMIT APPLICATION NO. PL-2002-0106

Julie McKillop and Ana Marisol Valles (Applicants); Julie McKillop (Owner)

742 B Street

Request to operate a retail wine and food shop.

General

- A. The approval of Use Permit application No. PL-2002-0106, as conditioned, will have no significant impact on the environment, cumulative or otherwise. The project reflects the City's independent judgment, and the project is categorically exempt from the California Environmental Quality Act (CEQA), pursuant to Sections 15301 and 15303, of the CEQA Guidelines (*Existing Facilities and New Construction or Conversion of Small Structures*).

Use Permit

- B. The proposed use is desirable for the public convenience or welfare in that, with the proximity to BART, the City parking garage and City Hall, the proposed business would help promote a lively, pedestrian-friendly atmosphere downtown.
- C. The proposed use will not impair the character and integrity of the zoning district and surrounding area in that it would create a mixed retail and residential use encouraged by the CC-C district. The shop would be adjacent to retail shops currently under construction on B Street.
- D. The proposed use will not be detrimental to the public health, safety, or general welfare in that the use would adhere to all of the operational requirements subject to alcoholic beverage establishments so that the shop would be a high quality addition to downtown Hayward. The proposal meets the Zoning Ordinance separation requirements for on-sale and off-sale licenses.
- E. The proposed use is in harmony with applicable City policies and the intent and purpose of the zoning district involved. The Retail and Office Commercial General Plan designation and the Central City-Commercial zoning district both support mixed use projects.

Additional Findings for Alcoholic Beverage Establishments

- F. The proposed use will not result in an undue concentration in the area of establishments dispensing alcoholic beverages in that the nearest on-sale and off-sale establishment is over 500 feet away.

ATTACHMENT B

- G. The proposed use will not detrimentally affect the surrounding neighborhood after giving consideration to the distance of the proposed use from the following: Residential structures, churches, schools, public playgrounds and parks, recreation centers, and other similar uses. The use would be adjacent to a residential use, however, the building will be operated in a manner compatible with residential uses as there would be two residential units directly above the shop.
- H. There is not another alcohol beverage establishment on the block face and the proposal is well over the required 100 feet from the nearest library, park or off-sale establishment.
- I. Although, according to the State Department of Alcoholic Beverage Control the census tract has an over-concentration of on-sale and off-sale licenses, the proposed use is necessary for public convenience and welfare in that it would provide a high quality eating, drinking, shopping establishment. The shop will be accessible by pedestrians and from mass transit and will provide opportunities for cultural and educational programs related to art and wine.

CONDITIONS OF APPROVAL

USE PERMIT APPLICATION NO. PL-2002-0106

Julie McKillop and Ana Marisol Valles (Applicants); Julie McKillop (Owner)

742 B Street

Request to operate a retail wine and food shop.

General:

1. Application Nos. PL-2002-0106 is approved subject to the conditions listed below. This permit becomes void one year after the effective date of approval, unless prior to that time a business license has been issued, or a time extension of this application is approved. A request for a one-year extension, approval of which is not guaranteed, must be submitted to the Planning Division 15 days prior to the above date.
2. The permittee shall assume the defense of and shall pay on behalf of and hold harmless the City, its officers, employees, volunteers and agents from and against any or all loss, liability, expense, claim costs, suits and damages of every kind, nature and description directly or indirectly arising from the performance and action of this permit.
3. Any proposal for alterations to the proposed site plan and/or design, which does not require a variance to any zoning code, must be approved by the Planning Director prior to implementation.
4. Prior to final inspection/occupancy, all improvements and conditions of approval shall be completed to the satisfaction of the Planning Director.
5. All improvements indicated on Exhibit "A", are hereby approved (except as noted below), and must be installed prior to authorization for final building occupancy.
 - a. A revised site plan shall be submitted which reflects the amendments required by the Landscaping and Engineering conditions.
 - b. Plans for a solid wood fenced trash enclosure on the right side of the building near the rear corner with equal areas for trash and recycling shall be approved by the Planning Director.
6. All signs shall comply with the Sign Ordinance regulations for the Central City-Commercial Zone District.
7. Prior to installation of any signs, sign plans and a sign permit application shall be submitted for approval by the Planning Director. Signs shall be in keeping with the historical and architectural character of the building. Any illumination shall be external.
8. Prior to application for a Building Permit for cooking facilities, plans must be stamped by the Alameda County Environmental Health Department.
9. A copy of the conditions of approval for the conditional use permit must be kept on the premises of the establishment and posted in a place where it may readily be viewed by the general public.

ATTACHMENT C

10. Exterior lighting shall be provided which is adequate for the illumination and protection of the premises. Lighting shall be installed in such a manner that it does not shine into adjacent residential properties.
11. A sign shall prominently posted on the exterior of the premises stating that consumption of alcoholic beverages in public is prohibited by law pursuant Chapter 4 of the Hayward Municipal Code.
12. The establishment shall discourage patrons and visitors from loitering in public rights-of-way, parking areas, and in front of adjacent properties.
13. No beer or malt liquor shall be sold in bottles or containers larger than 12 ounces for off-site consumption.
14. Beer and malt liquor in containers of 12 ounces or less shall not be sold in units of less than one six-pack for off-site consumption.
15. Wine shall not be sold in bottles or containers smaller than 750 ml and wine coolers shall not be sold in containers smaller than 12 ounces and in units of less than one four-pack for off-site consumption.
16. Distilled spirits shall not be sold in bottles or containers smaller than 750 ml for off-site consumption.
17. Consumption of alcoholic beverages shall not be permitted on any property adjacent to the licensed premises which is also under the control of the owner of the liquor establishment.
18. Within six months of the effective date of this permit, the applicant shall submit to the Planning Director an application to have the structure included on the City's list of Historically Significant Buildings.
19. Violation of conditions is cause for revocation of this permit, subject to a public hearing before the duly authorized reviewing body.

Landscaping:

20. Landscape areas and islands shall have an exterior width of at least 6 feet exterior and 5 feet interior. The landscape island adjacent to the handicap loading space must be widened. Parking space number 7 shall be deleted so that adequate back-up space can be provided while maintaining the required 5-foot setback from the side property line.
21. A revised site plan shall show no landscaping on the south side of the handicap loading space.
22. If landscaping is provided on the south sides of parking spaces 5 and 6, it must be low-growing to accommodate vehicle overhang.
23. Protection shall be provided for the trees to remain in place and any excavation within the drip lines of the existing trees shall be done by hand. If roots need to be cut or a root barrier installed, a certified arborist shall be on hand to supervise the work.

ATTACHMENT C

Engineering:

24. To accommodate a 5-foot-wide landscaped endcap parking stall #7 should be removed and parking stall #6 should be changed to meet compact parking stall standards to relieve the requirement for a 5-foot-wide back-up notch.
25. The back-up distance shall be modified to 26-feet to allow maximum landscaping on the site.
26. The shared 20-foot-wide driveway shall be a common driveway constructed to a curb-to-curb width of 19-feet. The driveway shall be designed and installed to adequately serve the proposed parking. Prior to approval of an encroachment permit the driveway design shall be approved by the Planning Director.
27. Prior to issuance of an encroachment permit a grading and drainage plan shall be approved by the Planning Director.
28. Prior to issuance of an encroachment permit an ingress/egress, utility, and maintenance easement shall be approved by the Planning Director and shall be recorded in the office of the Alameda County Recorder. Each property owner will have equal responsibility for the maintenance of the shared driveway.
29. The driveway approach shall conform to standard detail SD109. The driveway approach design may be modified if it is necessary to do so to save the existing Sycamore street trees.

Public Works/Division of Utilities:

30. A Reduced Pressure Backflow Prevention Assembly shall be installed as Per City of Hayward Standard Detail 202 on all commercial, domestic & irrigation water meters.
31. Installation of separate water meters to avoid sewer charges for irrigation consumption and to avoid commercial sewer rates on residential use is recommended.
32. Include a Gallon Per Minute Demand on plans to determine proper meter size for the commercial water.
33. Show locations of existing and proposed water meters and sanitary sewer laterals on plans. Keep in mind that water meters are to be located two feet from top of driveway flare as per City of Hayward Standard Details 213 thru 218. Water meters to be located a minimum of six feet from sanitary sewer lateral as per State Health Code.
34. Show following notes on plans:
 - a) Provide keys/access code/automatic gate opener to utilities for all meters enclosed by a fence/gate as per Hayward Municipal Code 11-2.02.1.
 - b) Only Water Distribution Personnel shall perform operation of valves on the Hayward Water System.
 - c) Water and Sewer service available subject to standard conditions and fees in effect at time of application.

ATTACHMENT C

Fire Department:

35. Installation of appropriate fire extinguishers throughout the facility is required, including 2A:10BC type (retail) and 40:BC type (food preparation area), if cooking is being conducted.
36. If a commercial hood is installed for cooking, a fire protection system will be required.

ATTACHMENT C

Neumanali Wines

Page 2-18 of Hayward's General Plan calls for the maintenance of the downtown as a focal point for the City so that it continues to express the City's history, provides a venue for cultural vitality, and retains its role as a center for social, political and other civic functions. Business owners are encouraged to develop projects that will increase market support for businesses, and extend the hours of downtown activity. New development should recognize the importance of continuous retail frontage and pedestrian shopping areas.

Currently under renovation is a project known as Newman Towers. Located at 742 B Street, it is a historically significant building, saved from demolition by the City of Hayward. It is currently approved for mixed use, with the bottom floor zoned for commercial.

In light of the preferences articulated by the General Plan, we would like to propose that the commercial space be used for a retail wine and food shop. The store would feature a variety of domestic and imported wine for sale with indoor and outdoor café seating. Featured prominently would be a wine tasting bar to educate and inform customers about the wines we offer. The store would also offer specialty sandwiches and other freshly prepared foods for take out. Operating hours would be from 11:00AM until 10:00 PM.

In addition, (and because of the unusual design and historical nature), we feel the shop would provide a desirable, ongoing venue for local art displays and occasional special events. The combination of art, food and wine would comply with the spirit of the general plan and provide a welcome addition to the downtown landscape.

RECEIVED

FEB 21 2002

ATTACHMENT D

UP 2002-0106

October 9, 2002

COMMPRE



22652 Second Street
Hayward, CA 94541
(510) 247-8207
(510) 247-8210 fax



A program of
Horizon Services, Inc.

Erik J Pearson, AICP, Associate Planner
City of Hayward
Planning Division
777 B Street
Hayward, CA 94541

Re: Conditional Use Permit Application PL-2002-0106, Neumanali Wines

Dear Mr. Pearson:

This letter is in response to the conditional use permit application for Neumanali Wines located at 742 B Street. According to the applicant, they intend to sell alcohol for both off and on sale and consumption.

CommPre objects to a new **off-sale** alcohol establishment with State Alcoholic Beverage Control (ABC) license types 20 or 21. The proposed establishment is in a severely over-concentrated area of active alcoholic beverage licenses. According to the ABC, census tract (4354) allows for 6 on-sale, and 4 off-sale alcohol licenses. Currently, there are **38** active on-sale, and **12** active off-sale establishments.

Within close proximity of the proposed establishment there are many active alcohol establishments. Off-sale establishments include: Albertson's and Bottle and Book House. On-sale establishments include: B Street Bar and Grill, El Tapatio Night Club, The Turf Club, Fernandes Stein Lounge, Uncle Roy's Saloon, Prince Beef Chinese Restaurant, Korean House, Zorn's Restaurant, and Buon Appetito.

According to the Hayward Zoning Ordinance, "*no new off-sale liquor establishments will be permitted within a radius of 500 feet of any other on-sale or off-sale liquor establishments.*" Within 500 feet of the proposed establishment are Bottle and Book House (off-sale) and B Street Bar and Grill (on-sale with separate bar area). Thus, approval of the conditional use permit would clearly violate the City's Zoning Ordinance and require a variance to the CUP. Past conditional use permits for off-sale alcohol establishments have been denied by both the Planning Commission and the City Council.

In regard to establishing a type 41 license to serve beer and wine in a restaurant setting, we believe such a use would better fit the intentions for Downtown Hayward redevelopment albeit this proposal anticipates 70% of sales to be from alcohol, not food. If the conditional use for on-sale beer and wine is approved, we recommend the following two conditions from ABC's "List of Conditions":

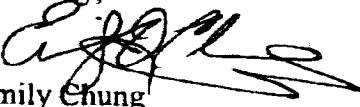
- Condition C32 – The sale of alcoholic beverages for consumption off the premises is strictly prohibited.

- To promote public health and safety, Condition C16 – The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food during the same period. The licensee shall at all times maintain records which reflect separately the gross sale of food and the gross sales of alcoholic beverages of the licensed business. Said records shall be kept no less frequently than on a quarterly basis and shall be made available to the Department on demand.
- All employees engaged in the dispensing of alcoholic beverages shall attend a State certified C(3) Responsible Beverage Service (RBS) training within six months of approval of this permit. Any employee hired after this permit is approved shall attend Responsible Beverage Service training within six months of his/her hire date. Employees must complete this course every 2 years.

For the reasons stated above, we respectfully request that the Planning Commission deny the conditional use permit application for off-sales consumption (License 20 and 21) and place the conditions recommended on the on-sale (License type 41) use.

Please contact me at 510-247-8225 if you have any questions or need further clarification. Thank you for your consideration.

Sincerely,



Emily Chung
Prevention Specialist/Community Organizer

cc: Julie McKillop, applicant
cc: Hayward Police Department